

## United States Senate

May 18, 2017

The Honorable Scott Pruitt  
Environmental Protection Agency  
Office of the Administrator, 1101A  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Pruitt:

As you work to review and reduce the unnecessary regulatory burdens on the American people, I would encourage you to consider evaluating Environmental Protection Agency (EPA) rules regarding the ocean disposal of dredged material.

Due to naturally-occurring sediment build-up, many private industrial port facilities, particularly those on the Texas Gulf Coast, must dredge their ship basins on an annual or periodic basis in order to keep such basins operational. As an alternative to onshore disposal of the dredged material, private companies routinely seek approval for the placement of dredged material offshore.

The ocean disposal of dredged material is currently subject to EPA review to ensure that the deposited sediment does not contaminate the waters or have other adverse environmental impacts. However, the rules are imprecise, which leads to inconsistent interpretation and implementation of the rules and creates uncertainty for private industry working to comply with the requirements. For example, the EPA currently has the authority to request "any additional information" on a permit request that it "deems necessary or appropriate."<sup>1</sup> This broad discretionary authority allows for seemingly endless requests for information, and in some instances the request for additional information is duplicative of information previously provided in different formats.

Additionally, the criteria for determining environmental impacts of ocean disposal<sup>2</sup> do not take into account previously issued permits for ocean disposal. As mentioned above, companies with private industrial terminals along a ship channel at a port conduct routine maintenance dredging of their basin. Once a basin is dredged, sediment from the ship channel—the same type of material that was previously removed by dredging—begins to once again naturally settle in that basin. As a result, the basins require continual dredging in order for the facility's terminal to

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<sup>1</sup> 40 C.F.R. § 225.2(b).

<sup>2</sup> *Id.* § 227.

remain in operation. Information describing the "characteristics and composition of the dredged material" is required to receive a permit for offshore disposal.<sup>3</sup> In order to avoid costly and time-consuming testing and bioassays of trace contaminants, the regulations should consider providing deference to situations where the constituents present in the material under review are at or below levels contained in materials that were previously permitted for ocean disposal.<sup>4</sup>

Lastly, the scope of "minor" maintenance dredging is not defined under the implementing regulations. Current regulations provide a list of actions that are deemed to "not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation."<sup>5</sup> One of these listed actions is "minor maintenance dredging using existing disposal sites."<sup>6</sup> However, "minor" is not defined in the regulation, and as a result, the permitting process for routine maintenance dredging and subsequent offshore disposal is potentially subject to bureaucratic discretion based on interpretation of the term.

As with any regulation, it is imperative that the EPA establish clear guidance to the regulated community and alleviate any ambiguities in the regulation that create unnecessary delay and increased cost. Modest modifications to this rule have the ability to make the permitting process for offshore dredge disposal more efficient and predictable while maintaining the goal of ensuring that the disposal of this material is not environmentally-damaging.

Thank you for your attention to this matter as you continue to work towards implementing meaningful regulatory reform for the American people.

Sincerely,



Ted Cruz

cc: Ryan Jackson, Chairman, Regulatory Reform Task Force

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<sup>3</sup> *Id.* § 225.2(a)(7).

<sup>4</sup> *See id.* § 227.6(f) (providing a list of exclusions to the list of prohibited constituents).

<sup>5</sup> 33 C.F.R. § 230.9.

<sup>6</sup> *Id.* at § 230.9(c).